S T A T E O F N E W Y O R K

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I N A S S E M B L Y

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Introduced by M. of A. BRENNAN, COOK, ZEBROWSKI, ROSENTHAL, JAFFEE, GUNTHER, ROBINSON, KAVANAGH, HOOPER, COLTON -- Multi-Sponsored by -- M. of A. BROOK-KRASNY, CAHILL, CUSICK, CYMBROWITZ, GOTTFRIED, TITONE -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to unfair claim settlement practices

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The insurance law is amended by adding a new section 2601-a to read as follows:

S 2601-A. UNFAIR CLAIM SETTLEMENT PRACTICES; CIVIL REMEDY. (A) AN INSURER DOING BUSINESS IN THIS STATE SHALL BE LIABLE TO THE HOLDER OF A POLICY ISSUED OR RENEWED PURSUANT TO ARTICLE THIRTY-FOUR OF THIS CHAPTER FOR DAMAGES AS PROVIDED IN THIS SECTION UPON SUCH POLICY HOLDER PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT SUCH INSURER'S REFUSAL TO PAY OR UNREASONABLE DELAY IN PAYMENT TO THE POLICY HOLDER OF AMOUNTS CLAIMED TO BE DUE UNDER A POLICY WAS NOT SUBSTANTIALLY JUSTIFIED. AN INSURER IS NOT SUBSTANTIALLY JUSTIFIED IN REFUSING TO PAY OR IN UNREASONABLY DELAYING PAYMENT WHEN THE INSURER:

(1) INTENTIONALLY, RECKLESSLY OR BY GROSS NEGLIGENCE FAILED TO PROVIDE THE POLICY HOLDER WITH ACCURATE INFORMATION CONCERNING POLICY PROVISIONS RELATING TO THE COVERAGE AT ISSUE;

(2) FAILED TO EFFECTUATE IN GOOD FAITH A PROMPT, FAIR AND EQUITABLE SETTLEMENT OF A CLAIM SUBMITTED BY SUCH POLICY HOLDER IN WHICH LIABILITY OF SUCH INSURER TO SUCH POLICY HOLDER WAS REASONABLY CLEAR;

(3) FAILED TO PROVIDE A TIMELY WRITTEN DENIAL OF A POLICY HOLDER'S CLAIM WITH A FULL AND COMPLETE EXPLANATION OF SUCH DENIAL, INCLUDING REFERENCES TO SPECIFIC POLICY PROVISIONS WHEREVER POSSIBLE;

(4) FAILED TO MAKE A FINAL DETERMINATION AND NOTIFY THE POLICY HOLDER IN WRITING OF ITS POSITION ON BOTH LIABILITY FOR, AND THE INSURER'S

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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VALUATION OF, A CLAIM WITHIN SIX MONTHS OF THE DATE ON WHICH IT RECEIVED ACTUAL OR CONSTRUCTIVE NOTICE OF THE LOSS UPON WHICH THE CLAIM IS BASED;

(5) FAILED TO ACT IN GOOD FAITH BY COMPELLING THE POLICY HOLDER TO INSTITUTE SUIT TO RECOVER AMOUNTS DUE UNDER ITS POLICY BY OFFERING SUBSTANTIALLY LESS THAN THE AMOUNTS ULTIMATELY RECOVERED IN SUIT BROUGHT BY SUCH POLICY HOLDER; OR

(6) FAILED TO PROMPTLY PROCEED WITH THE APPRAISAL PROCESS ONCE SUCH HAS BEEN DEMANDED IN ANY CLAIM WHERE COVERAGE FOR A PORTION OF THE CLAIM HAS BEEN ACCEPTED BY SUCH INSURER AND A DISAGREEMENT EXISTS BETWEEN THE INSURED AND THE INSURER WITH RESPECT TO THE VALUE OF COVERED PROPERTY OR THE AMOUNT, OR EXTENT OF THE COVERED LOSS.

(B) ANY POLICY HOLDER WHO ESTABLISHES LIABILITY PURSUANT TO SUBSECTION (A) OF THIS SECTION SHALL BE ENTITLED TO RECOVER, IN ADDITION TO AMOUNTS DUE UNDER THE POLICY, INTEREST, COSTS, AND DISBURSEMENTS, COMPENSATORY DAMAGES, CONSEQUENTIAL DAMAGES AND REASONABLE ATTORNEYS' FEES INCURRED BY THE POLICY HOLDER FROM THE DATE OF THE LOSS, IN RECOVERING MONIES DUE PURSUANT TO THE TERMS OF THE POLICY AS WELL AS PUNITIVE DAMAGES CAPPED AT TWO TIMES THE VALUE OF THE COVERED LOSS ESTABLISHED AT TRIAL.

(C) ANY POLICY HOLDER MAY RECOVER DAMAGES FROM AN INSURER DOING BUSINESS IN THIS STATE PURSUANT TO THIS SECTION EITHER AS PART OF AN ACTION TO RECOVER UNDER THE TERMS OF AN INSURANCE POLICY OR IN A SEPARATE ACTION.

(1) AS A CONDITION TO ANY RECOVERY PURSUANT TO SUBSECTION (A) OF THIS SECTION, A CIVIL REMEDY NOTICE OF THE ALLEGED VIOLATION MUST BE FILED WITH BOTH THE INSURER AND THE DEPARTMENT AT LEAST SIXTY DAYS PRIOR TO COMMENCEMENT OF AN ACTION SEEKING RELIEF PURSUANT TO SUBSECTION (A) OF THIS SECTION.

(2) THE CIVIL REMEDY NOTICE MUST BE ON A FORM APPROVED BY THE DEPARTMENT AND INCLUDE THE FOLLOWING INFORMATION, IF SUCH INFORMATION IS REASONABLY KNOWN TO THE INSURED:

(A) THE STATUTORY PROVISION, INCLUDING THE SPECIFIC LANGUAGE OF THE STATUTE WHICH THE INSURER IS ALLEGED TO HAVE VIOLATED.

(B) THE FACTS AND CIRCUMSTANCES GIVING RISE TO THE VIOLATION.

(C) THE NAME OF ANY INDIVIDUAL INVOLVED IN THE VIOLATION.

(D) REFERENCE TO SPECIFIC POLICY LANGUAGE THAT IS RELEVANT TO THE VIOLATION, IF ANY.

(E) A STATEMENT THAT THE NOTICE IS GIVEN IN ORDER TO PROTECT THE RIGHT TO PURSUE THE CIVIL REMEDY.

(3) THE INSURER WHO IS THE SUBJECT OF THE CIVIL REMEDY NOTICE SHALL HAVE SIXTY DAYS FROM THE FILING OF THE REQUIRED NOTICE TO CURE THE VIOLATION. NO CIVIL ACTION UNDER THIS SECTION WILL BE SUSTAINABLE IF, WITHIN SIXTY DAYS AFTER THE REQUIRED NOTICE FILING, THE DAMAGES SOUGHT ARE PAID.

(4) THE RIGHTS ENUMERATED HEREIN ARE NOT THE EXCLUSIVE REMEDIES AVAILABLE TO THE INSURED AND DO NOT PRECLUDE ANY COMMON LAW CLAIMS OR OTHER STATUTORY CLAIMS THAT MAY EXIST.

(D) IN ANY TRIAL OF A CAUSE OF ACTION ASSERTED AGAINST AN INSURER PURSUANT TO THIS SECTION, EVIDENCE OF SETTLEMENT DISCUSSIONS WRITTEN AND VERBAL OFFERS TO COMPROMISE, LOSS RESERVE AMOUNTS AND OTHER EVIDENCE RELATING TO THE CLAIMS PROCESS SHALL BE ADMISSIBLE. IF CAUSES OF ACTION RELATING TO LIABILITY OF THE INSURER UNDER THE POLICY AND UNDER THIS SECTION ARE ALLEGED IN THE SAME ACTION, THE COURT MAY BIFURCATE THE TRIAL OF ISSUES SO AS TO AVOID PREJUDICE TO THE INSURER ON THE ISSUE OF LIABILITY UNDER THE POLICY AND FACILITATE ADMISSIBILITY OF EVIDENCE ON THE CAUSES OF ACTION ASSERTED PURSUANT TO THIS SECTION.

(E) ALL AMOUNTS RECOVERED FROM AN INSURER AS ACTUAL DAMAGES, CONSEQUENTIAL DAMAGES, REASONABLE ATTORNEYS' FEES AND PUNITIVE DAMAGES IN ANY ACTION AUTHORIZED IN THIS SECTION SHALL BE EXCLUDED BY THE INSURER IN ITS DETERMINATIONS OF THE PREMIUMS IT WILL CHARGE ALL POLICY HOLDERS ON ALL POLICIES ISSUED BY IT.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, and shall apply to all acts and omissions by insurers occurring on or after such effective date.